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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

JAN 21 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

DOCKET FILE COPY ORIGINAL

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments, FM Broadcast Stations
(Anniston and Ashland, AL, College Park,
Covington, and Milledgeville, Georgia)

FCC 02-201

MM Docket No. 98-112
RM-9027
RM-9268
RM-9384

To: The Commission

OPPOSITION TO MOTION TO FILE RESPONSE

**PRESTON W. SMALL
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January 21, 2003

Preston W. Small (Mr. Small), by his attorney, hereby replies to WNNX LICO, Inc.'s January 14, 2003 *Motion for Leave to File Response (Motion)*. In reply thereto, the following is respectfully submitted:

1) WNNX is concerned that Mr. Small's *Notice of No Response* was filed without seeking leave of the Commission. Mr. Small did not consider it necessary to seek leave to file the *Notice* in view of the fact that it appeared that WNNX had determined that it would not to oppose the *Third and Fourth Motions for Leave to Supplement*. Certainly Mr. Small is entitled to provide the Commission with information concerning how WNNX's failures to respond should be construed and, in the face of no contradictory evidence being introduced, what the Commission's legal requirements are in light of those uncontradicted facts. In a separate pleading WNNX belatedly responds to the factual allegations contained in the *Third and Fourth Motions for Leave to Supplement* and its instant *Motion* is intended to obtain leave to file the untimely response. Mr. Small does not object to the acceptance of the substance of WNNX's untimely response and Mr. Small is concurrently filing herewith a *Reply to Response*.¹

2) However, Mr. Small does object to WNNX's untimely raising of procedural arguments against Mr. Small's *Third and Fourth Motion for Leave to Supplement*. *Motion*, at 2. WNNX claims that Mr. Small's *Third and Fourth Motions for Leave to Supplement* are unauthorized and


¹ WNNX mischaracterizes its *Response* as a response to Mr. Small's January 2, 2003 *Notice of No Response Received to Third and Fourth Motions for Leave to File Supplement and Request for Entry of Adverse Findings Against WNNX LICO, Inc.* WNNX *Response* responds to the factual information presented in the *Third and Fourth Motions for Leave to Supplement*. The factual information presented in the *Notice of No Response* clearly summarizes the information presented in the *Third and Fourth Motions for Leave to Supplement* for the purpose of establishing factual predicates to support conclusions of law. No new factual information, other than noting WNNX's failures to respond, is raised in the *Notice of No Response*.

untimely. WNNX makes these procedural arguments in an untimely pleading and contradicts the very point it is making. Moreover, Mr. Small's *Third and Fourth Motions for Leave to Supplement* clearly seeks authorization to file the factual information contained therein and provides the justification for filing the information. The *Third and Fourth Motions for Leave to Supplement* are clearly pleadings which are "separate" from the petition for reconsideration. 47 C.F.R. § 1.429(e). The Commission will need to determine whether conclusive evidence of WNNX's misrepresentation is deserving of attention in this proceeding, but clearly Mr. Small followed appropriate procedures in bringing the information to the Commission's attention

WHEREFORE, in view of the information presented herein, the Commission should deny WNNX's *Motion* to the extent that it argues that the *Third and Fourth Motions for Leave to Supplement* are procedurally defective. To the extent that WNNX's *Motion* seeks leave to file a substantive response to the *Third and Fourth Motions for Leave to Supplement*, Mr. Small consents to the request.

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January 21, 2003

Respectfully submitted,
PRESTON W. SMALL


Timothy E. Welch
His Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of January 2003 served a copy of the foregoing OPPOSITION TO MOTION TO FILE RESPONSE by First-class United States mail, postage prepaid, upon the following:

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